NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Rogan Brothers Sanitation, Inc. and R&S Waste Services, LLC, a single employer and/or successor and Waste Services, Inc., and ECSI America, Inc., a single employer, and R&S Waste Services, LLC, alter egos and/or R&S Waste Services, LLC, and Waste Services, Inc., a successor and Teamsters Local 813, International Brotherhood of Teamsters. Cases 02–CA–040028, 02–CA–065928, 02–CA–065930, and 02–CA–066512

April 9, 2020

SUPPLEMENTAL DECISION AND ORDER

By Chairman Ring and Members Kaplan and Emanuel

In this compliance proceeding, the General Counsel has filed a Motion for Partial Summary Judgment and to strike portions of the amended answer submitted by Respondents Waste Services, Inc., R&S Waste Services, LLC, and ECSI America, Inc. (Respondents) in response to the amended consolidated compliance specification. In his motion, the General Counsel asserts that the Respondents' amended answer attempts to raise matters that were decided in the underlying unfair labor practice proceedings and is inadequate under the Board's Rules and Regulations. For the reasons that follow, we grant the General Counsel's motion.

On December 9, 2011, the National Labor Relations Board issued a Decision and Order granting the General Counsel's Motion for Summary Judgment against Rogan Brothers Sanitation, Inc. (Rogan Brothers), pursuant to the noncompliance provisions of a bilateral informal settlement agreement. *Rogan Bros. Sanitation, Inc.*, 357 NLRB 1655 (2011) (*Rogan Brothers I*). The Board ordered Rogan Brothers to take certain affirmative actions, including making discriminatees Anthony Mercado and Daniel Mattei whole and paying the amount set forth in the settlement agreement to discriminatee Joseph Smith. On March 22, 2012, the United States Court of Appeals for the Second Circuit entered a judgment enforcing the Board's order in *Rogan Brothers I*.

On April 8, 2015, the Board issued a Decision and Order, finding, inter alia, that Rogan Brothers and R&S Waste Services, LLC (R&S Waste), were jointly and severally liable as a single employer for the unlawful terminations of Wayne Revell, Joseph Smith, and Michael Roake from March 1, 2011, through October 4, 2011.

Rogan Bros. Sanitation, Inc., 362 NLRB 547 (2015) ("Rogan Brothers II"). On June 7, 2016, the United States Court of Appeals for the Second Circuit entered a judgment enforcing the Board's order in Rogan Brothers II.²

A controversy having arisen over the amount of backpay due the discriminatees under the Board's orders in Rogan Brothers I and II and any derivative liability, the Regional Director for Region 2 issued a consolidated compliance specification and notice of hearing on December 17, 2018. The specification alleges, in relevant part, that R&S Waste is derivatively liable for the unfair labor practices in Rogan Brothers I as a single employer with and/or Golden State³ successor to Rogan Brothers, and that Waste Services, Inc. (Waste Services) is derivatively liable for the unfair labor practices in both Rogan Brothers I and II. The specification also sets forth the backpay amounts due to the five discriminatees in Rogan Brothers I and II. On January 11, 2019, the Respondents filed an answer to the specification. On April 19, 2019, the Region amended the specification, additionally alleging that Waste Services is a Golden State successor to R&S Waste and clarifying the allegation that R&S Waste is the Golden State successor to Rogan Brothers. On May 10, 2019, the Respondents filed an amended answer to the specification.

On May 21, 2019, the General Counsel filed the pending motion requesting that the Board transfer the case to the Board, strike portions of the Respondents' amended answer, and grant partial summary judgment (motion). The General Counsel also filed a memorandum of law in support of the motion. On July 19, 2019, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's motion should not be granted. Thereafter, the Respondents filed an answer and accompanying memorandum of law in opposition to the General Counsel's motion, and the General Counsel filed a reply.

On the entire record the Board makes the following

¹ Specifically, the Board ordered Rogan Brothers to offer employees Mercado and Mattei full reinstatement to their former jobs and to make them whole for any loss of earnings and other benefits suffered as a result of Rogan Brothers' unlawful actions against them, with interest, and to remit the amount set forth in the informal settlement agreement, plus interest, owed to employee Smith.

² R&S Waste Servs., LLC v. NLRB, 651 Fed.Appx. 34 (2d Cir. 2016).

³ Golden State Bottling Co. v. NLRB, 414 U.S. 168 (1973).

Ruling on the Motion to Strike Portions of Respondents' Amended Answer to the Amended Compliance Specification

A. The Respondents' Attempt to Relitigate Matters Previously Decided by the Board

The General Counsel moves to strike portions of the Respondents' amended answer to the amended specification, asserting that the Respondents, in effect, are denying factual findings or legal conclusions made by the Board in *Rogan Brothers I* and *II* and are thereby seeking to relitigate matters already decided by the Board. "It is well settled that a respondent may not relitigate matters in the compliance stage that were decided in an underlying unfair labor practice proceeding." *M. D. Miller Trucking & Topsoil, Inc.*, 363 NLRB No. 49, slip op. at 2 (2015) (citing *Convergence Communications, Inc.*, 342 NLRB 918, 919 (2004)), enfd. 728 Fed.Appx. 2 (D.C. Cir. 2018). We find merit in the General Counsel's position and, accordingly, strike portions of the Respondents' amended answer as described below.

1. Paragraph 1(a) of the amended specification

The General Counsel alleges that R&S Waste and Rogan Brothers were a single employer from March 1, 2011 through October 4, 2011, as found by the Board in Rogan Brothers II. In their amended answer, the Respondents deny the General Counsel's allegation "to the extent there was no common ownership." In Rogan Brothers II, the Board concluded that "common ownership [was] established." 362 NLRB at 550. By their denial, the Respondents seek to relitigate whether R&S Waste and Rogan Brothers had common ownership. Accordingly, we grant the General Counsel's motion to strike paragraph 1(a) from the Respondents' amended answer.

2. Paragraphs 1(b) through 1(f) of the amended specification

The General Counsel alleges the dates of the unfair labor practice proceedings in *Rogan Brothers I*, and further alleges that Rogan Brothers and R&S Waste were a single employer during that time, as found by the Board in *Rogan Brothers II*. The Respondents deny knowledge regarding the General Counsel's allegations. In *Rogan Brothers I*, the Board set forth the dates the complaint, the answer and the Motion for Summary Judgment were filed. The Board also indicated that Rogan Brothers filed a response to the Motion for Summary Judgment. 357 NLRB at 1656. In *Rogan Brothers II*, the Board found R&S Waste and Rogan Brothers were a single employer from March 1, 2011, through October 4, 2011. 362 NLRB at 553. By denying paragraphs 1(b) through 1(f),

the Respondents are attempting to relitigate the Board's findings in *Rogan Brothers I* and *II*. Accordingly, we grant the General Counsel's motion to strike paragraphs 1(b) through 1(f) from the Respondents' amended answer.

3. Paragraph 2(a) of the amended specification

The General Counsel alleges that on January 1, 2011, "Joseph Spiezio, through Spiezio Organization LLC, and Respondent Rogan [Brothers] entered into a consulting agreement whereby Spiezio agreed to represent Respondent Rogan [Brothers] on various issues related to Respondent [Rogan Brothers'] labor relations " The Respondents deny this allegation, explaining that Spiezio Organization—not Spiezio himself—was the separate legal entity that contracted with Rogan Brothers. In Rogan Brothers II, the Board stated that "Spiezio and Rogan entered into an agreement whereby Spiezio would act as a consultant for [Rogan Brothers] on issues such as retaining counsel for labor related matters " 362 NLRB at 548. The Respondents' denial of this allegation in the amended specification seeks to relitigate issues already decided by the Board in Rogan Brothers II. Accordingly, we grant the General Counsel's motion to strike paragraph 2(a) from the Respondents' amended answer.

4. Paragraphs 2(b) through 2(e) of the amended specification

The General Counsel alleges facts showing the transfer of Rogan Brothers' assets to R&S Waste in 2011. The Respondents admit paragraph 2(b) but deny paragraphs 2(c) through 2(e). We agree with the General Counsel that, by their denials, the Respondents are attempting to relitigate findings that were set forth in *Rogan Brothers II*.

Paragraph 2(c) alleges that on May 25, 2011, Spiezio created "an enforceable security interest in Respondent [Rogan Brothers'] commercial sanitation and roll-off business in Westchester County, New York" In Rogan Brothers II, the Board found that "a Security Agreement dated January 3, 2011 . . . between Rogan Brothers as debtor and Pinnacle Equity Group, LLC⁴ as the secured party . . . lists items used as collateral," and that "the filing . . . of a document listing the property used as the security for the loan from . . . Joseph Spiezio to James Rogan" was dated May 25, 2011. 362 NLRB at 564. The Board also found that "after making the loan, Spiezio, by virtue of the secured collateral agreement, had a substantial potential interest in that company's real

⁴ Pinnacle Equity Group was a business financing services company owned by Spiezio. See 362 NLRB at 548.

and intangible assets." Id. at 577. We grant the General Counsel's motion to strike paragraph 2(c) from the Respondents' amended answer.

Paragraph 2(d) alleges that on July 31, 2011, "Joseph Spiezio, through Pinnacle, acquired Respondent [Rogan Brothers'] commercial sanitation and roll-off business in Westchester County, New York, by foreclosing on Pinnacle's enforceable security interest in Respondent Rogan [Brothers], and assigned Respondent [Rogan Brothers'] collateral to Respondent R&S." In Rogan Brothers II, the Board found that "[o]n July 31, certain assets of [Rogan Brothers] that served as security for the loan—customer lists, trucks, dumpsters, and other equipment—were surrendered to R&S through Pinnacle in full satisfaction of [Rogan Brothers'] debt." 362 NLRB at 548. We grant the General Counsel's motion to strike paragraph 2(d) from the Respondents' amended answer.

Paragraph 2(e) alleges that "Joseph Spiezio continued to operate Respondent [Rogan Brothers'] commercial sanitation and roll-off business in Westchester County, New York as Respondent R&S in basically unchanged form." In *Rogan Brothers II*, the Board stated the following:

R&S commenced operations on August 1, [2011] servicing most of [Rogan Brothers'] former customers [...]. Its work force consisted mainly of former [Rogan Brothers] bargaining unit drivers and helpers who were not Local 813 members, and whom Spiezio hired immediately after their separation from [Rogan Brothers] during the last week of July. The R&S workforce also included some current [Rogan Brothers] drivers who were Local 813 members....

. . . .

When R&S took over the waste collection operations of [Rogan Brothers] on August 1, some of the people who actually did this work were drivers on the Rogan Brothers payroll . . . [who] continued to work on their same trucks and do their same routes. Other employees were former [Rogan Brothers] drivers and helpers who had been terminated the previous week and immediately rehired by Spiezio for R&S. Both groups of employees continued to report to work after August 1 at the same [Rogan Brothers] truck yard at 1014 Saw Mill River Road.

362 NLRB at 548, 550 (internal quotation marks omitted).

The Board further stated that "Spiezio... created R&S for the purpose of taking over all or part of [Rogan Brothers'] business in the event that Rogan [Brothers] could not repay the loan." Id. at 566. Accordingly, we

grant the General Counsel's motion to strike paragraph 2(e) from the Respondents' amended answer.

5. Paragraphs 1(g), 2(j), 4(e), 4(k), 4(l) through (n), 5(a), 5(c), 6(a), and 6(c) of the amended specification

The General Counsel alleges that the Respondents are jointly and severally liable for remedying Rogan Brothers' unfair labor practices, including reinstating and making whole discriminatees Daniel Mattei and Anthony Mercado. The Respondents deny these allegations in both the corresponding paragraphs and affirmative defense 25 of their amended answer, asserting that Mattei and Mercado waived their right to reinstatement as part of the settlement agreement of the unfair labor practice charge underlying Rogan Brothers I. However, Rogan Brothers defaulted on that agreement in 2011, and, in Rogan Brothers I, the Board ordered the customary reinstatement and make-whole remedies for Mattei and Mercado. Therefore, we agree with the General Counsel that the Respondents should be precluded from denying any paragraphs of the specification on the basis that Mattei and Mercado agreed to waive reinstatement for the purpose of settlement. Accordingly, we grant the General Counsel's motion to strike those portions of the Respondents' amended answer in paragraphs 1(g), 2(j), 4(e), 4(k), 4(l) through (n), 5(a), 5(c), 6(a), and 6(c).

6. Paragraph 9 of the amended specification

The General Counsel provides the Region's calculations of discriminatee Joseph Smith's gross backpay, as set forth in *Rogan Brothers I*. The Respondents deny knowledge regarding paragraph 9. By their denial, the Respondents are, in effect, disputing the Board's findings in *Rogan Brothers I* and are attempting to relitigate matters already decided by the Board. In addition, the Respondents have provided no basis to deny the interest calculations on Smith's backpay. Accordingly, we grant the General Counsel's motion to strike Paragraph 9 from the Respondent's amended answer.

7. Paragraph 7(a) of the specification

The General Counsel alleges that discriminatee Wayne Revell's backpay period began on October 4, 2011, the date the Board found that Rogan Brothers and R&S Waste, as a single employer, unlawfully discharged Revell, and continued until his reinstatement to R&S Waste on October 8, 2011. The Respondents deny the allegation, asserting that "Revell was offered a job at R&S the same day [...]" he was terminated. In *Rogan Brothers II*, the Board found that Rogan Brothers and R&S Waste, as a single employer, violated Section 8(a)(3) and (1) by discharging Revell on October 4, 2011, and violated Section 8(a)(1) by telling Revell he was terminated because of his Union membership. The Board found that a man-

ager "promised Revell a job at R&S, conditioned on him resigning his union membership...." 362 NLRB at 553. Thus, Rogan Brothers and R&S Waste's termination of Revell, and R&S Waste's simultaneous employment offer conditioned on Revell's resignation from the Union, were part of the same unlawful act, and the Respondents are attempting to relitigate the unlawful termination of Revell for being a union member. Accordingly, we grant the General Counsel's motion to strike paragraph 7(a) from the Respondent's amended answer.

8. Paragraph 7(b) of the specification

The General Counsel alleges Revell's gross backpay is the amount he would have earned at Rogan Brothers and R&S Waste between October 4 and 8, 2011, but for his unlawful October 4 discharge. The Respondents deny this paragraph on the basis that R&S Waste and Rogan Brothers were no longer a single employer on October 4. The Board in *Rogan Brothers II* found R&S Waste jointly and severally liable for Revell's termination. Thus, the Respondents are attempting to relitigate an issue that was decided in the underlying unfair labor practice proceeding. Accordingly, we grant the General Counsel's motion to strike paragraph 7(b) from the Respondent's amended answer.

9. Paragraphs 10(a) and 10(b) of the specification

The General Counsel alleges that discriminatee Smith's backpay period in Rogan Brothers II commenced on October 5, 2011—the day after the Board found that Rogan Brothers and R&S Waste, as a single employer, unlawfully discharged Smith-and continued until October 7, 2016, when he received an offer of reinstatement. The General Counsel further alleges Smith's gross backpay is the amount he would have earned at Rogan Brothers and R&S Waste during the backpay period, but for his unlawful discharge. The Respondents deny the allegations on the basis that Smith refused a substantially equivalent position by not applying to work at R&S Waste. The Respondents' assertion contravenes the Board's finding in Rogan Brothers II that both R&S Waste and Rogan Brothers unlawfully terminated Smith as a single employer and that R&S Waste had a duty to reinstate him. Thus, the Respondents are attempting to relitigate an issue that was decided in the underlying unfair labor practice proceeding. Accordingly, we grant the General Counsel's motion to strike paragraph 10(a) and the remainder of paragraph 10(b) of the Respondents' amended answer.

B. The Respondents' Assertion that There Are Offsets to the Region's Gross Backpay Calculations

Section 102.56(b) of the Board's Rules and Regulations states, in relevant part:

(b) Form and contents of answer. The answer must specifically admit, deny, or explain each and every allegation of the specification, unless the Respondent is without knowledge, in which case the Respondent must so state, such statement operating as a denial. Denials must fairly meet the substance of the allegations of the specification at issue. When a Respondent intends to deny only a part of an allegation, the Respondent must specify so much of it as is true and deny only the remainder. As to all matters within the knowledge of the Respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial will not suffice. As to such matters, if the Respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer must specifically state the basis for such disagreement, setting forth in detail the Respondent's position and furnishing the appropriate supporting figures.

In paragraphs 5(b), 6(b), 7(b), 8(b), and 10(b) of the specification, the General Counsel alleges that the Region's gross backpay calculations for all five discriminatees are the wages they "would have earned while employed by Respondents during [the] backpay period" As part of their denial of the corresponding paragraphs of the specification, the Respondents repeatedly argue that there are unidentified "offsets" to the Region's gross backpay calculations for all five discriminatees. We agree with the General Counsel that this is not a sufficient denial because the Respondents have not provided alternative gross backpay calculations that address these "offsets." See, e.g., Ampersand Publishing, LLC d/b/a Santa Barbara News-Press, 368 NLRB No. 65 (2019) (finding that the employer's amended answer challenging the accuracy of alleged merit-increase backpay amounts on the basis that some employees may not have qualified for merit increases did not meet the requirements of Section 102.56(b) because the employer failed to set forth its position in detail or to furnish supporting figures to counter those in the compliance specification); Ace Unlimited, 360 NLRB 197, 199 (2014) (rejecting the employer's argument disputing the General Counsel's backpay calculation, reasoning that the employer did not provide a sufficient basis for its disagreement). Accordingly, we grant the General Counsel's motion to strike the Respondents' denial of paragraphs 5(b), 6(b), 7(b), 8(b), and 10(b) of the amended specification to the extent they argue there are "offsets" to the Region's gross backpay calculations.

Ruling on Motion for Partial Summary Judgment

A. R&S Waste's Derivative Liability

The General Counsel seeks partial summary judgment as to paragraphs 1(g) and 2(f) through (j) of the amended specification, asserting that R&S Waste is derivatively liable to remedy Rogan Brothers' unfair labor practices in Rogan Brothers I as both a single employer with and a Golden State successor to Rogan Brothers. In Golden State, the Supreme Court approved the Board's holding in Perma Vinyl Corp., 164 NLRB 968 (1967), that a bona fide successor employer that acquires and continues a business in "basically unchanged form" with knowledge of the predecessor's unfair labor practices can be held liable for the predecessor's remedial obligations. 414 U.S. at 171-172 fn. 2, 184-185. The Court agreed with the Perma Vinyl rationale that a purchaser-successor is in the best position to redress known violations without being unduly burdened because it can adjust the purchase price to reflect its potential liability or arrange other indemnification by the offending seller. Id. at 171 fn. 2, 185. For the reasons below, we find that R&S Waste is a Golden State successor and grant the General Counsel's Motion for Partial Summary Judgment as to paragraphs 2(f) through (j) of the amended specification.⁵

First, the Respondents argue that R&S Waste is not a Golden State successor because there was no bona fide purchase of assets. We find no merit to this contention. The Board has held that the sale and purchase of assets is not a prerequisite for finding successorship. See Hot Bagels & Donuts, 244 NLRB 129, 131 (1979) (successor was former predecessor who returned as lessee after bank foreclosure), enfd. 622 F.2d 1113 (2d Cir. 1980); Ponn Distributing, Inc., 232 NLRB 312, 313-315 (1977) (successor foreclosed its security interest and retook distributorship), enf. denied on other grounds sub nom. NLRB v. Cott Corp., 578 F.2d 892 (1st Cir. 1978). In this case, although there was no purchase of assets, the security agreement between Joseph Spiezio and Rogan Brothers created an enforceable security interest once Spiezio identified the real and intangible assets of Rogan Brothers as collateral to secure the loan. We agree with the General Counsel that Spiezio's foreclosure of that security interest in Rogan Brothers on July 31, 2011, was sufficiently analogous to a purchase of assets for purposes of Golden State liability.

Moreover, we agree with the General Counsel that the Board's findings in *Rogan Brothers II* establish that R&S

Waste substantially continued Rogan Westchester County operations. Factors bearing on whether substantial continuity exists include "whether the business of both employers is essentially the same; whether the employees of the new company are doing the same jobs in the same working conditions under the same supervisors; and whether the new entity has the same production process, produces the same products, and basically has the same body of customers." Fall River Dyeing & Finishing Corp. v. NLRB, 482 U.S. 27, 43 (1987). As explained above in our analysis of the General Counsel's motion to strike Paragraph 2(e) of the amended answer, the Board in Rogan Brothers II determined that there was no hiatus between the relevant operations of R&S Waste and Rogan Brothers, they served most of the same customers and shared common management, and many of the same employees continued to perform the same work. Thus, the Board found sufficient facts to determine that R&S Waste substantially continued Rogan's relevant Westchester County commercial sanitation operations beginning on August 1, $2011.^{6}$

Regarding R&S Waste's knowledge of Rogan Brothers' unfair labor practices, the Board in *Rogan Brothers II* specifically found that

[b]eginning in March, soon after [Rogan Brothers general manager Michael] Vetrano instructed [Local 813] business agent [James] Troy to henceforth "take up . . . labor matters with Spiezio," Spiezio and Troy commenced discussions of an unfair labor practice charge that Local 813 had filed against [Rogan Brothers]. Notwithstanding that the parties had already settled the charge in an informal agreement that the Board's Regional Director had approved [as reflected in *Rogan Brothers I*], Spiezio sought Troy's agreement to withdraw the charge and resolve it through the grievance-arbitration procedure

362 NLRB at 551. These findings establish that R&S Waste, through its principal Spiezio, was on notice of the potential unfair labor practice liability stemming from

⁵ We find it unnecessary to pass on the General Counsel's theory, expressed in par. 1(g) of the amended specification, that R&S Waste is derivatively liable for remedying Rogan Brothers' unfair labor practices in *Rogan Brothers I* as a single employer.

⁶ There is no support for the Respondents' assertion that they should not be held liable for the unfair labor practice liability stemming from *Rogan Brothers I* because of the 7-year period between the Board's decision in *Rogan Brothers I* and issuance of the specification, and because the General Counsel could have alleged R&S Waste as a *Golden State* successor to Rogan Brothers in *Rogan Brothers II*. The Board has held that in compliance matters, the doctrine of laches is not a defense against the Board in its enforcement of a public right. See *Aroostook County Regional Ophthalmology Center*, 332 NLRB 1616, 1618–1619 (2001). Further, the Board has held that the General Counsel may choose to litigate questions of derivative liability at the compliance stage rather than in the underlying unfair labor practice proceeding. See *2 Sisters Food Group, Inc.*, 361 NLRB 1380, 1380 (2014).

Rogan Brothers I as early as March 2011—well before Spiezio foreclosed on Rogan Brothers' relevant assets on July 31, 2011, and before he secured the loan to Rogan Brothers by identifying Rogan Brothers' collateral on May 25, 2011.

We reject the Respondents' assertion that because R&S Waste did not purchase assets from Rogan Brothers, R&S Waste did not have the opportunity to negotiate an indemnity clause to protect itself against the risk associated with potential unfair labor practice liability or to negotiate a lower price to reflect that risk. R&S Waste and Rogan Brothers were under Spiezio's integrated control while the entities constituted a single employer from March 1, 2011, through October 4, 2011. During this period, Spiezio decided which Rogan Brothers assets would secure the Pinnacle loan on May 25, 2011, when to foreclose on the loan, and when and which Rogan Brothers assets would be transferred to R&S Waste. The Board in *Rogan Brothers II* pointed to the judge's findings that Spiezio

"became increasingly involved in the business affairs of [Rogan Brothers] as the de facto manager of the company," and eventually "it was Spiezio, and not James Rogan [who] was running or attempting to run the business of [Rogan Brothers]" Spiezio set up bank accounts with Key Bank to transact [Rogan Brothers] business, used loan proceeds from the Pinnacle loan to make payments to [Rogan Brothers'] creditors and to businesses that provided services to [Rogan Brothers] . . . Spiezio also made the "quintessential managerial decision" to shut down [Rogan Brothers'] Westchester operations by declaring the Pinnacle loan to [Rogan Brothers] in default and designating which physical assets, i.e., trucks and equipment, would remain [Rogan Brothers] property and which would be transferred to R&S.

362 NLRB at 552. Moreover, the Board found that Spiezio had complete control over Rogan Brothers' finances, observing the following:

Spiezio testified that he refused to allow loan proceeds to pay some [Rogan Brothers] bills presented to him by [James] Rogan, telling him that payment should be made as "part of your cash flow" from [Rogan Brothers]. While performing these financial duties for [Rogan Brothers], Spiezio was concurrently conducting the business operations of R&S.

Id. at 550.

Thus, Spiezio had full control of the entire security agreement transaction and, further, had the opportunity to adjust both the collateral and loan disbursement to reflect the risk associated with unfair labor practice liability. The Board has recognized that such financial control supports a finding of *Golden State* successorship. See, e.g., *Ponn Distributing*, 232 NLRB at 313–315 (finding successorship based on maintenance of some control over predecessor's manner of operation and subsequent assumption of control of business to protect own investment); cf. *Lebanite Corp.*, 346 NLRB 748 (2006) (finding no *Golden State* successorship where the successor leased its relevant operations from the predecessor and did not have any opportunity to negotiate a lease price that could account for potential unfair labor practice liability). We agree with the General Counsel that imposing liability in these circumstances does not impose an undue hardship on the Respondents.

B. Waste Services' Derivative Liability

The General Counsel also seeks partial summary judgment as to paragraphs 4(i) through (n) of the amended specification. In those paragraphs, the General Counsel alleges that Waste Services, as a Golden State successor to R&S Waste, is derivatively liable to remedy R&S Waste's unfair labor practices in Rogan Brothers II and Rogan Brothers' unfair labor practices in Rogan Brothers I, for which R&S Waste is liable. The Respondents admit in paragraphs 4(f) through (j) of their amended answer that (1) following R&S Waste's merger into Waste Services, Waste Services continued the business of R&S Waste in basically unchanged form, and (2) Spiezio was the principal of both entities and executed the merger of R&S Waste into Waste Services on March 11, 2019, which was made retroactively effective December 31, 2018. Due to his direct relationship with Rogan Brothers, Spiezio had knowledge of the potential liability of R&S Waste from Rogan Brothers I as early as March 1, In addition, Spiezio had knowledge of R&S Waste's potential liability in Rogan Brothers II as of October 21, 2011, based on service of the second amended charge in Case 02-CA-065928. As Spiezio was a principal of Waste Services, his knowledge is imputed to Waste Services. See, e.g., Robert G. Andrew, Inc., 300 NLRB 444, 445 (1990) (employer on notice of predecessor's unfair labor practices via knowledge of owner/president and affiliated attorney). Further, by service of the original specification on December 17, 2018, Waste Services was put on notice of R&S Waste's and its own potential liability to remedy the unfair labor practices in Rogan Brothers I and II. Accordingly, we agree with the General Counsel that summary judgment is warranted as to paragraphs 4(i) through (n) of the amended specification and find Waste Services derivatively liable for remedying the unfair labor practices in Rogan Brothers I and II as a Golden State successor to R&S Waste.

ORDER

It is ordered that the General Counsel's motion to strike is granted with respect to paragraphs 1(a) through 1(f), 2(a), 2(c) through 2(e), 7(a) and (b), 9, and 10(a) and (b) of the Respondents' amended answer in their entirety, and the corresponding paragraphs in the amended compliance specification are deemed admitted and true. The motion to strike is also granted with respect to the portions of paragraphs 4, 5, 6, and 8(b) of the Respondents' amended answer specified above.

It is further ordered that the General Counsel's Motion for Partial Summary Judgment as to paragraphs 2(f) through (j) and 4(i) through (n) of the amended specification is granted.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 2 for the purpose of arranging a hearing before an administrative

law judge on the remaining allegations of the amended specification.

Dated, Washington, D.C. April 9, 2020

John F. Ring,	Chairmar
Marvin E. Kaplan,	Member
William J. Emanuel,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD